IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5000 OF 2006.

Kashinath Ganpati Mule and another. ... Petitioners.
Versus.
Nagnath Ganpati Mule and others. ... Respondents.

Shri S.S.Shah for the Petitioners.

Shri R.U.Vasekar for the Respondents Nos.1 to 5.

Shri P.I.Khemani, A.G.P. for Respondent No.9.

CORAM : ABHAY S.OKA, J.

DATED : 16th April, 2007.

P.C.:

1. Submissions of the learned Advocates appearing for the parties were heard on the last date. By order dated 17th October 2006, writ petition was ordered to be heard finally.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 31st March 2006 passed by the Additional Collector in a Revision Application under section 23 of the Mamlatdars' Court Act, 1906 (hereinafter referred to as "the said Act"). The Respondents applied under section 5 of the said Act before the Tahasildar. The Tahasildar rejected the prayer made by the Respondents. In a Revision Application filed by the Respondents, the Additional Collector has set aside the order of the Tahasildar and

has remanded the matter back to the Tahsildar.

3. The learned Advocate for the Petitioners submitted that on a plain reading of the Application made by the concerned Respondents, they could not have invoked the provisions of section 5 of the said Act. He submitted that the Tahasildar has no jurisdiction to grant relief which is prayed for by the concerned Respondents. He submitted that the order of remand is confined only to certain issues and after remand it will not be open for the Petitioner to urge the issue of jurisdiction and maintainability. The learned Counsel appearing for the 1st to 5th Respondents supported the impugned order.

4. I have considered the submissions. By the impugned order, the learned Additional Collector has ordered a fresh enquiry to be made by the Tahasildar. A perusal of the order shows that the order of remand is confined to certain issues which are reflected in the impugned order. In my view, while passing the order of remand after setting aside the order passed by the Tahasildar, the scope of the proceedings after remand could not have been restricted and all contentions of the parties including the contentions raised by the Petitioners regarding the maintainability and jurisdiction ought to have been kept open. In this view

of the matter, the impugned order needs modification.

5. Hence the following order is passed:

(i) The impugned Judgment and Order dated 31st March 2006 passed in Revision Application No.7 of 2005 is modified by directing that all contentions of the parties including the contentions raised by the Petitioners regarding the jurisdiction of the Tahasildar to entertain the Application/suit filed by the 1st to 8th Respondents are expressly kept open.

(ii) After order of remand, the Tahasildar will decide the matter afresh without being influenced by the observations made in the impugned Judgment and Order.

(iii) The Tahasildar will conclude the enquiry and pass appropriate order on or before 30th November 2007.

(iv) Writ petition is partly allowed in the above terms with no order as to costs.

(v) The parties and all concerned to act on an

authenticated copy of this order.

Judge.